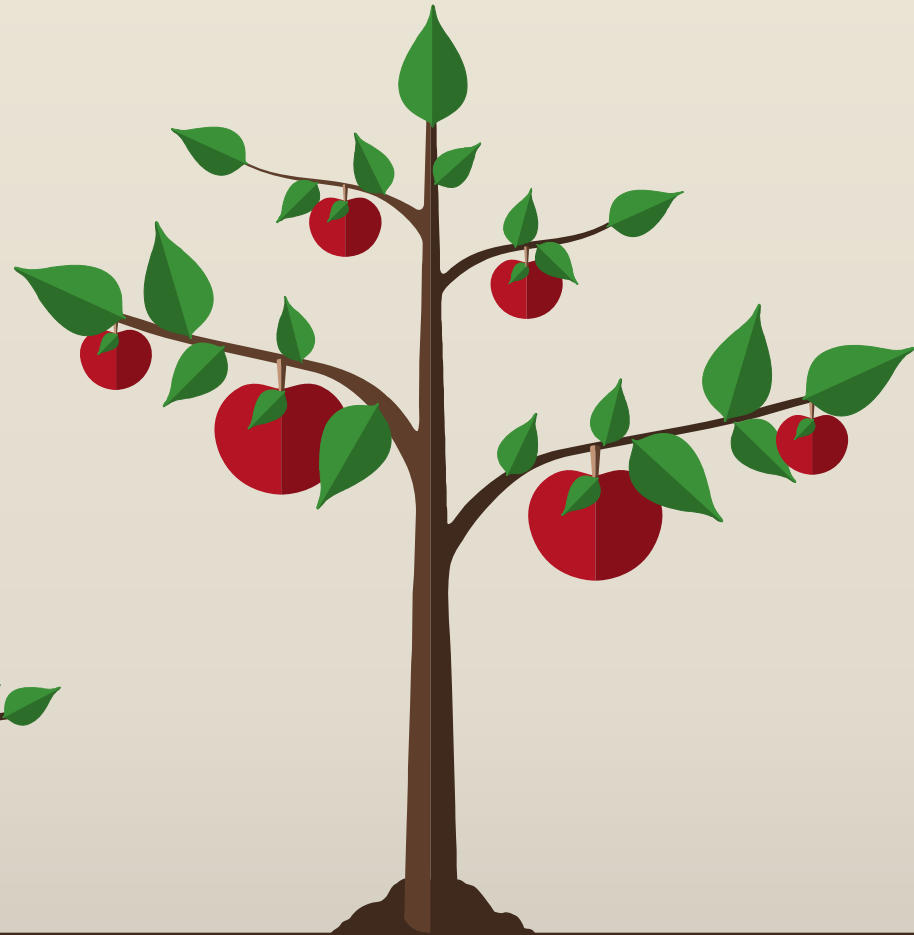
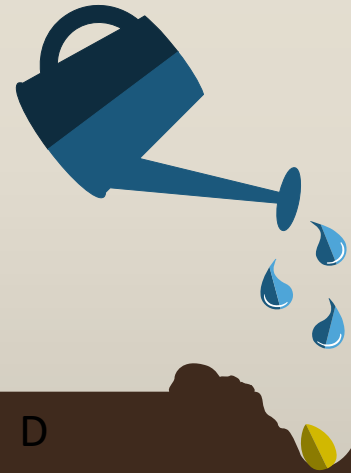


Perishable Agricultural Commodities Act



“How can we help you?”



Basil W. Coale, Jr.
Regional Director

PACA Division, Eastern Regional Office
Fair Trade Practices Program

The PACA....facilitating fair trade practices in the fruit and vegetable industry through education, mediation, licensing and enforcement.

What is PACA?



Perishable Agricultural Commodities Act



Federal law enacted in 1930



Regulates interstate & foreign commerce



Fresh/ Frozen fruits and vegetables



Promotes fair trade and prompt pay

PACA Offices

PACA Division HEADQUARTERS

Washington, DC 20250-0235

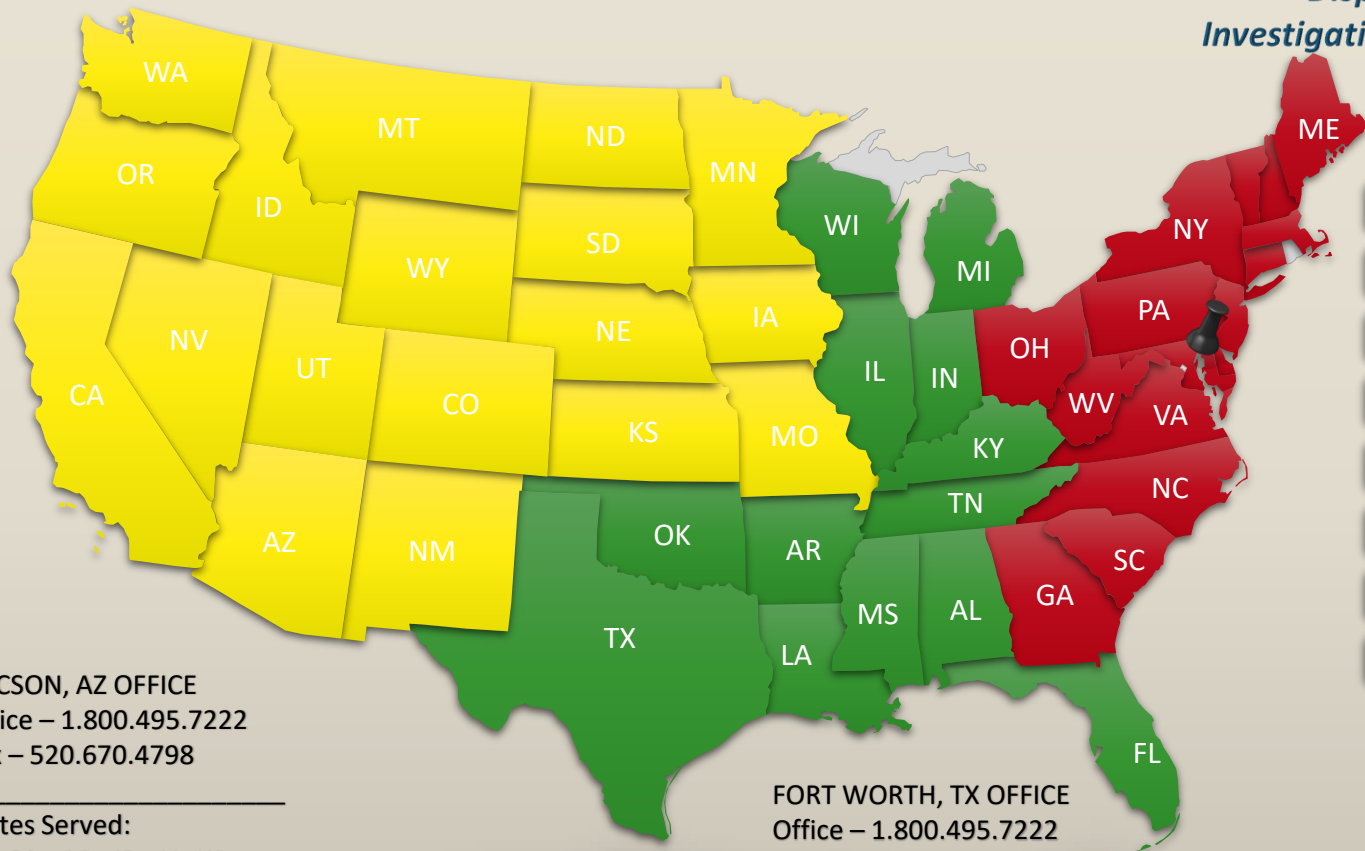
Toll Free – 1.877.622.4716

Office of the Director - 202.720.4180

Dispute Resolution - 202.720.2890

Investigative Enforcement - 202.720.6873

Fax - 202.690.4413



VT

NH

MA

RI

CT

NJ

DE

DC

NATIONAL LICENSE CENTER

Office – 1.800.495.7222

Fax – (202) 260-8575

Fredericksburg, VA OFFICE

Office – 1.800.495.7222

Fax – (540) 373-2690

States Served:

CT DC DE GA ME WV MD

MA NC NH NJ NY OH PA

RI SC VT VA

PR (not shown)

VI (not shown)

Guam (not shown)

TUCSON, AZ OFFICE
Office – 1.800.495.7222
Fax – 520.670.4798

States Served:
AZ CA CO ID IA KS
MN MO MT ND NM NE
NV OR SD UT WA WY
AK (not shown),
HI (not shown)

FORT WORTH, TX OFFICE
Office – 1.800.495.7222
Fax – 817.978.0786

States Served:
AL AR FL IL IN KY MI
MS OK TN TX WI LA



PACA Headquarters

Washington, DC

**National License
Center
Washington DC,**

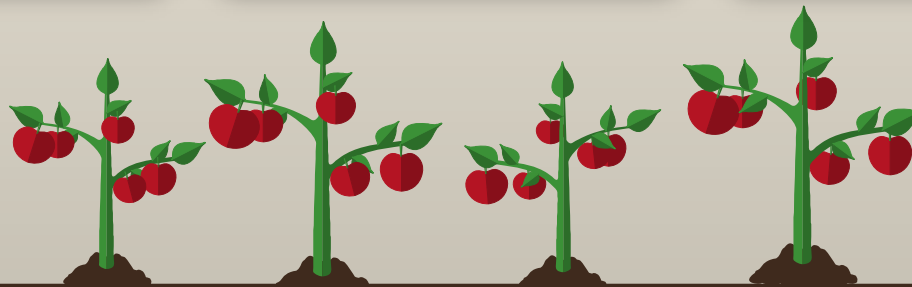
**Dispute
Resolution
Branch
Washington, DC**

**Investigative
Enforcement
Branch
Washington, DC**

**Fort Worth, TX
Field-Office**

**Fredericksburg, VA
Field-Office**

**Tucson, AZ
Field-Office**



How does PACA work?



Requires mandatory
licenses for dealers

Defines common
trade terms

Establishes fair
business rules

Provides forum for
dispute resolution

Institutes
enforcement
mechanism

Provides real time
advice to callers
through the customer
service line

Why is PACA needed?

The Perishable Agricultural Commodities Act (PACA) was enacted at the request of the fruit and vegetable industry.

Promote fair trade in the industry.

Perishable nature of products.

States unable to govern interstate commerce.



Why is PACA needed?

Transportation options deliver produce to more areas at greater distances.

Larger service area increases risk with new buyers.

Assist Growers/ Buyers/ Sellers in resolution of trade disputes.

Guidance of the Act and the rules governing a transaction



Summary of PACA Services Provided

Advice
concerning
contract
disputes

Help you get
paid through
reparation
complaint
process

Financial
protection
under the Civil
Trust

Promote fair
trade between
firms

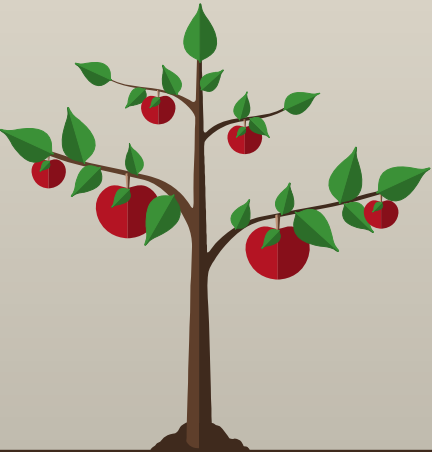
Auditing of a
licensee's
records to verify
accountings
(sales &
expenses)



Mandatory License

Dealers who buy
or sell 2,000
pounds or more
on any day

Retailers are
exempt until
they purchase or
negotiate sales
of \$230,000 or
more in a
calendar year



PACA Licensee Ground Rules

Generally, PACA requires that firms and individuals operating in the F&V industry live up to the terms of their agreements.

Sellers: must ship the quantity and quality specified.

Buyers: must accept shipments that meet contract specifications.



Who needs a PACA license?

Requires License

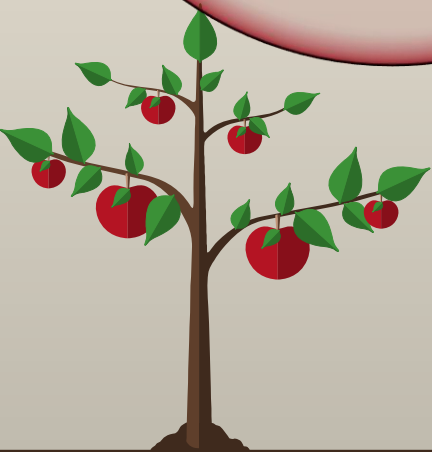
- Wholesale Dealers
 - Shippers
- Grower's Agents
 - Brokers
 - Processors
- Large Retailers

Does Not Require License

- Growers handling their own product
- Freight Companies
 - Restaurants

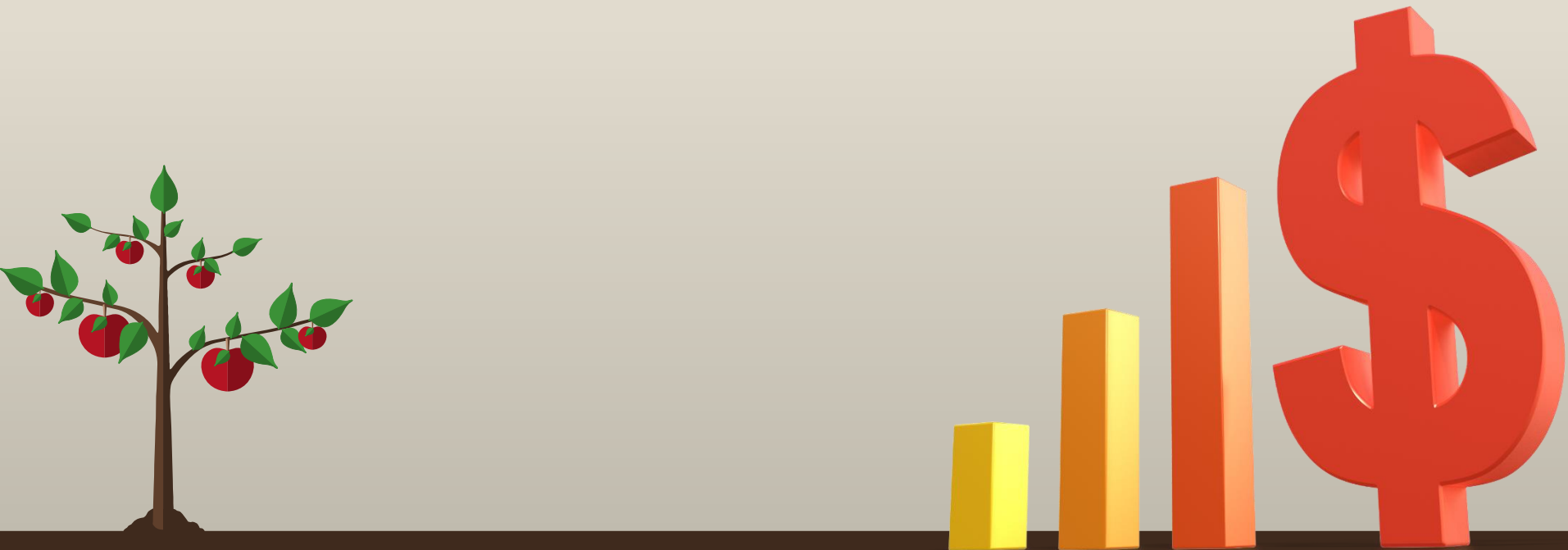
Exempt

- Growers who handle only their own product
- Truckers who haul for hire only
 - Restaurants

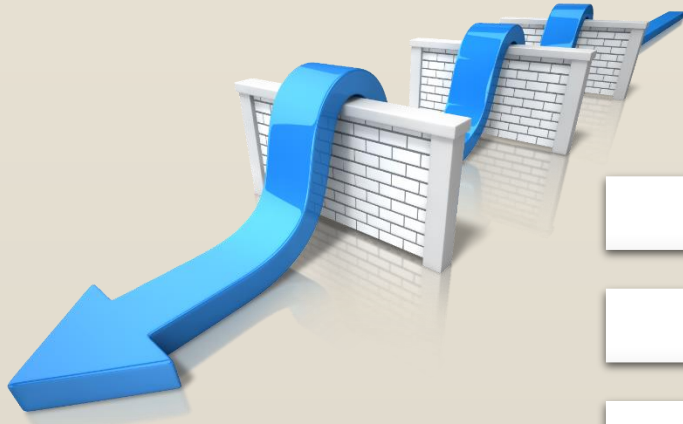


Operating Without a License

Any entity that operates subject to the Act without a valid and effective license is subject to a penalty of **\$1,200** for each such offense and up to **\$350** for each day it continues.



Challenges in the Produce Industry



Rejections, market decline, overstock,

Inadequate record keeping

Failure to account truly and correctly

Refusal to pay and “slow pay”

Misbranding and misrepresenting product

Bankruptcies— “Snowball Effect”

Unscrupulous entrants/fraud

Common Complaints



Failure to pay for product

Failure to account truly and correctly

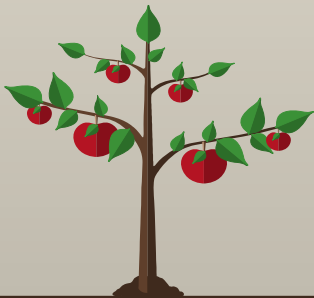
Failure to ship or deliver

Ineffective rejection

Wrongful rejection

Misunderstood Contract Terms

Unauthorized change in contract terms



Acceptance & Rejection

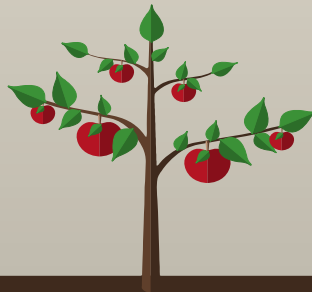
Acceptance

Any action
inconsistent
with shipper's
ownership

Procedurally
Correct vs.
Procedurally
Incorrect

Warranted vs.
Unwarranted

Rejection



How to Get You Paid...



Payment arrives as expected

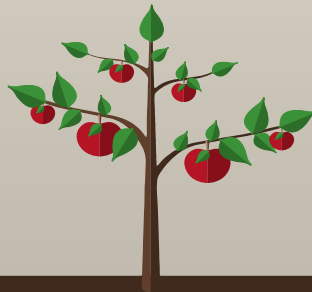
Problem load/ new terms

Collection action/ District Court

Informal complaint process

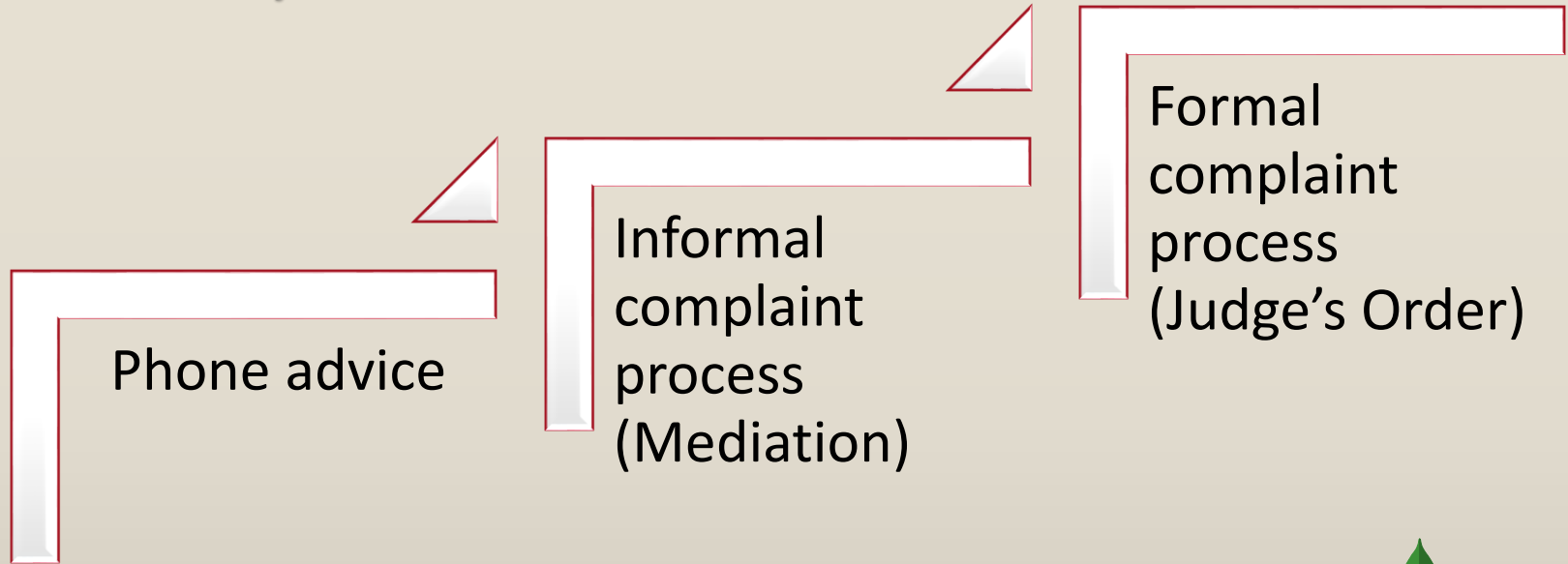
Formal complaint process (Judge's Order)

PACA Trust



Dispute Resolution

Three-tier System:



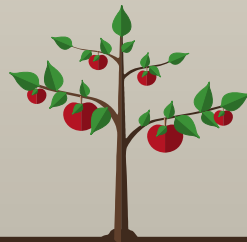
Avenues of Resolution

Informal Complaints

- Informal settlement
- Mediation
- No Judicial Involvement

Formal Complaints

- Documentary Procedure
- Oral Hearing
- Judicial Orders and License Suspensions



Merits of PACA Intervention

Impartial involvement

Knowledge of trade practices, customs

Knowledge of trade terms, definitions
and the law as it applies to specific
situations

Minimal expense

No financial benefit in outcome.



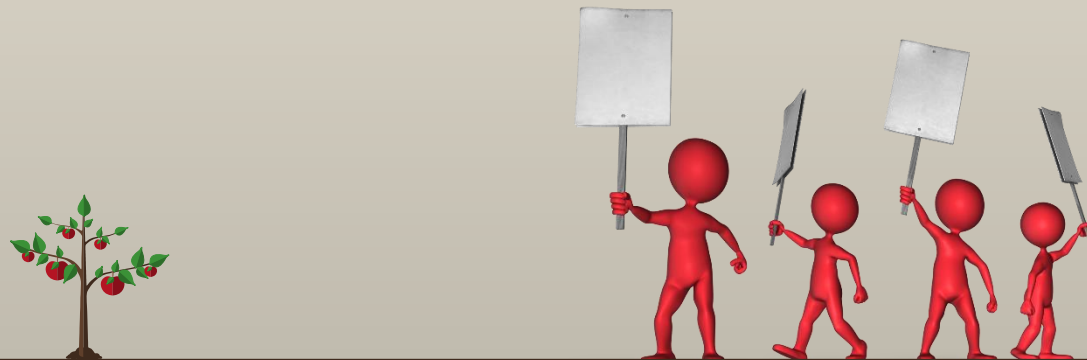
Who can file complaints?

Growers or
financially
interested party

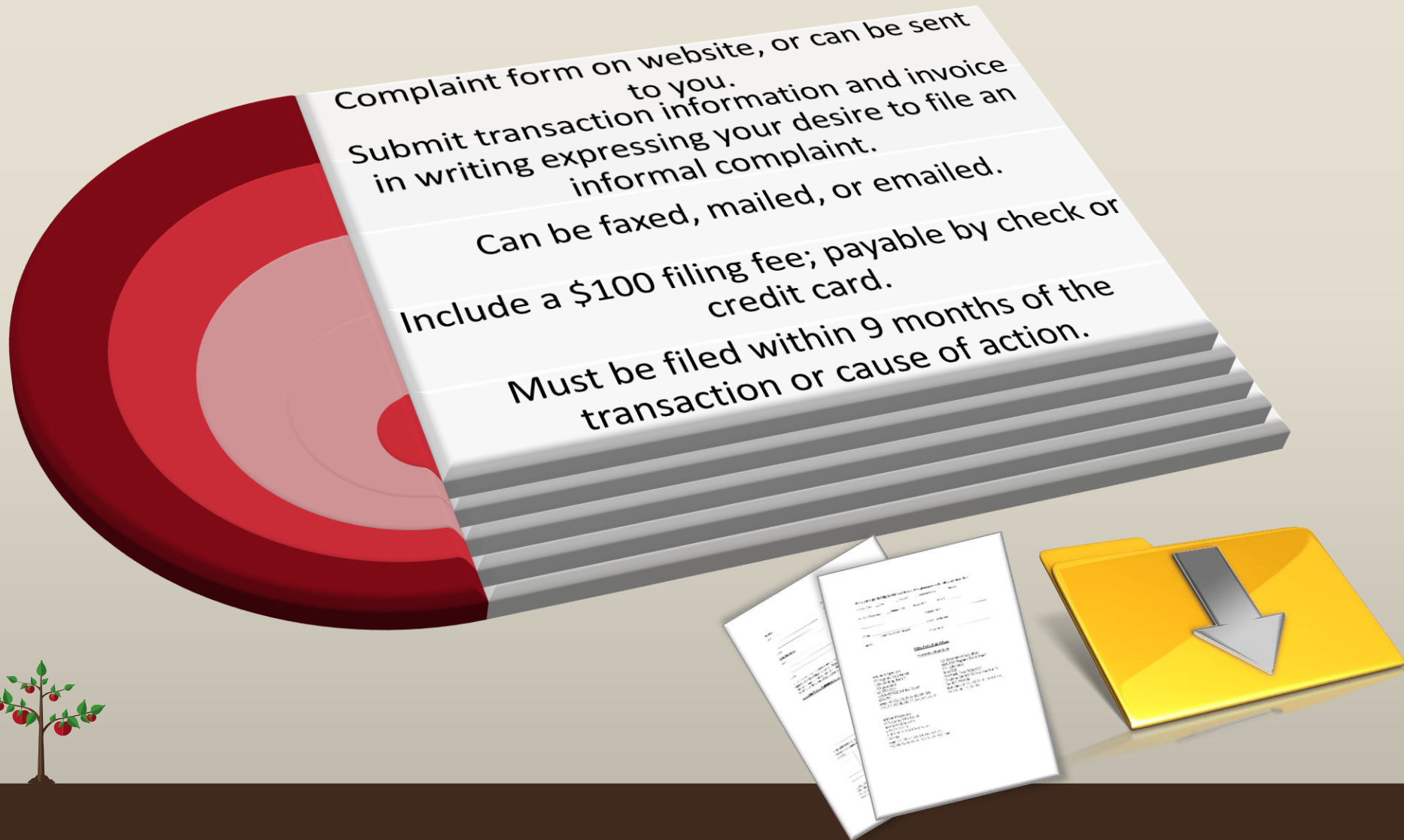
Associations on
behalf of their
members

Attorneys on
behalf of their
clients

Sales/Grower's
agents on behalf
of shippers



Filing an Informal Complaint



Complaint Examples

Undisputed – Failure to Pay in Full



Disputed – Breach of Contract



Grower's Agent – Seasonal Contract

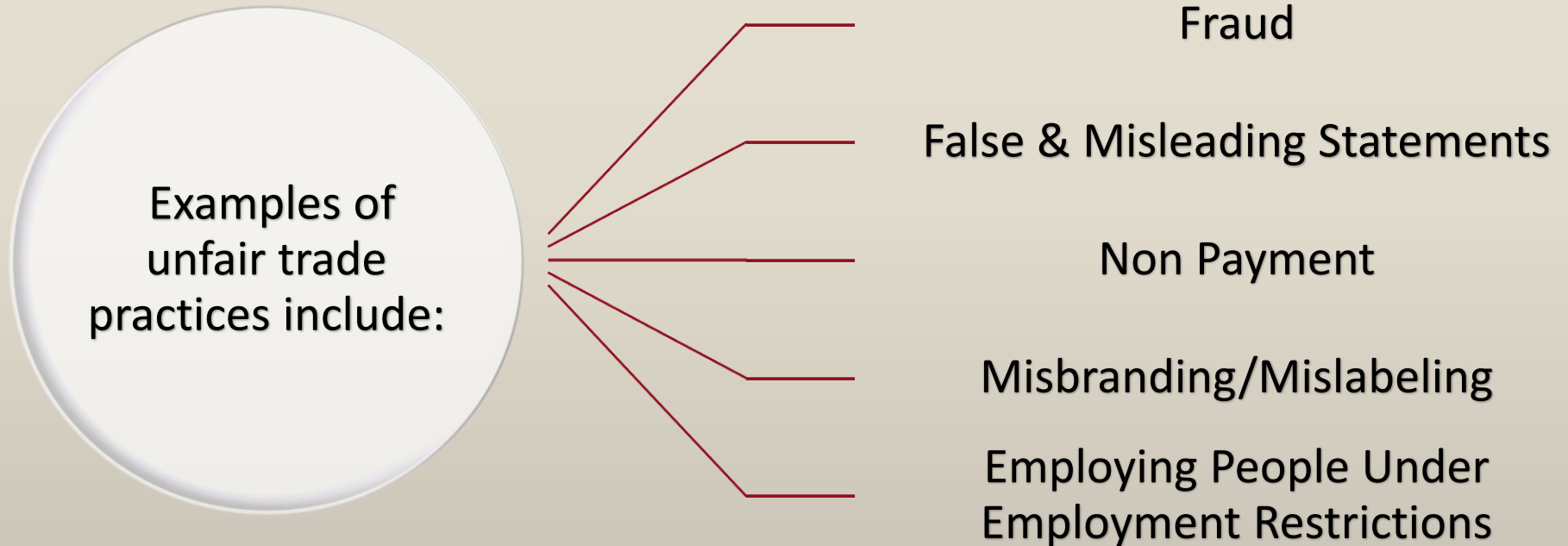


In the past three years, USDA resolved approximately 3,700 PACA claims involving more than \$66 million.*



Enforcement

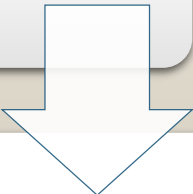
PACA may only take action after WRITTEN notice from outside the Division is received



Enforcement

The PACA Division has the authority under the law to take “responsibly connected” individuals out of the produce industry for a specific time:

1st year – complete ban from produce work



2nd year – eligible to return to work with approval from the Secretary, secured with bonding provided by employer



Basis of Damages:

Inspection Certificates

PACA & SCI Inspection Certificate

Percentage of Defects

				OFFSIZE/DEFECTS
INJURY	DAM	SER DAM	V.S. DAM	
NA	0	0	NA	QUALITY DEFECTS
NA	10	4	NA	BRUISING (2 TO 15%)
NA	1	1	NA	DECAY (0 TO 2%)
NA	11	5	NA	CHECKSUM



Considerations When Analyzing Inspection Certificates

Type of contract (FOB No Grade, FOB U.S. No. 1, etc.)

Date shipped & date of arrival at destination

Date of inspection

Loaded or unloaded at time of inspection

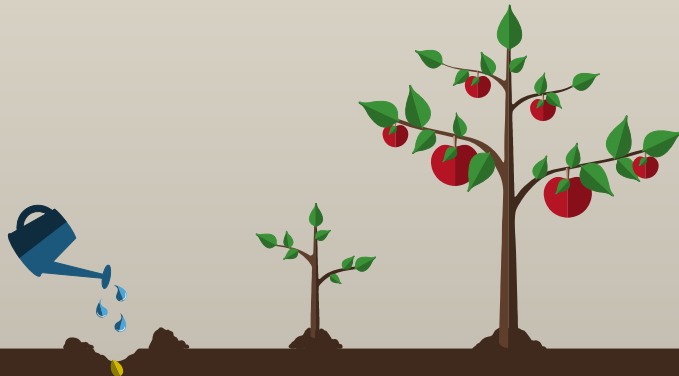
Pulp temperature & transit temperature

Quantity shipped & quantity inspected

Type of product inspected, brands, markings, etc.

Types of defects (quality or condition)

Product compatibility if shipped with other product(s)



“Suitable Shipping Condition”

“Good Delivery”

The product at time of shipment, if handled under normal transportation conditions, will arrive without abnormal deterioration at the contract destination

Since produce is inherently perishable, we apply the “SSC” concept that allows for a “normal” amount of deterioration

Applies to condition and quality defects combined in a grade-specified contract



“Good Delivery” Hotline



1-800-495-7222, select Option #2

FREE assistance

Staffed by Fruit & Vegetable Experts

Available 7AM – 7PM Mon-Fri (EST)

Call upon delivery of a load with a potential problem

Our Division has assisted more than 7,100 callers with issues valued at approximately \$100 million in last three years



“Good Delivery” Guidelines

COMMODITY	U.S. GRADE STANDARDS	MAXIMUM % OF DEFECTS ALLOWED	OPTIMUM TRANSIT TEMP (F)†	CHILLING INJURY?
A				
Anise, Sweet	10-1	15-3	32-36‡	
Apples	10-5-1	15-8-3	30-32	
Apricots	10-5-1	15-8-3	32	
Artichokes	10-2	15-4	32	
Asparagus*	10-5-1	15-8-3	32	
Avocados	10-5-1	15-8-3	40-55	Yes
B				
Bananas	No Stds.		56-58	Yes
Beans, Fava	No Stds.	15-3	32‡	
Beans, Lima	10-5-1	15-8-3	41-43	
Beans, Snan*	13-5-1	18-8-3	40-45	Yes





What to do when customer files bankruptcy

How to preserve your trust rights

Information about potential customers

Guidance on USDA Inspection results

Understanding rights/options in a dispute

Responsibilities of the Grower's Agent under PACA



Maintain a valid PACA license

Written contract with the grower and maintaining adequate records

List functions that both agent and grower will perform and the charges

Issue receiving receipts to grower, file PACA trust notices for grower, account to the grower



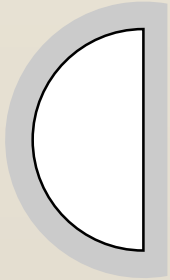
Grower's Agent Prompt Accounting

Must account for initial
shipment within 30 days
after receipt of goods



Final accounting for season
shall be made within 30
days from last shipment

Mediation Services



BENEFITS

Parties to conflict achieve greater satisfaction and immediate closure.

Parties more likely to live with the agreement.

Does not place blame.

Increased possibility of future business relations.

Eliminates cost of litigation or processing a formal complaint on all parties involved.



PACA Trust & How it Works

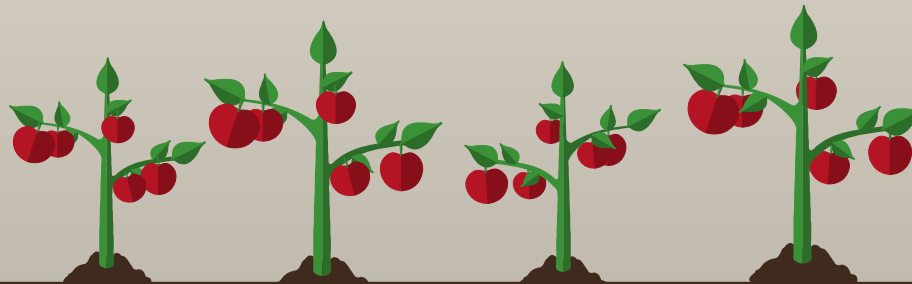
Financial Protection for Sellers

Become secured creditor with priority status

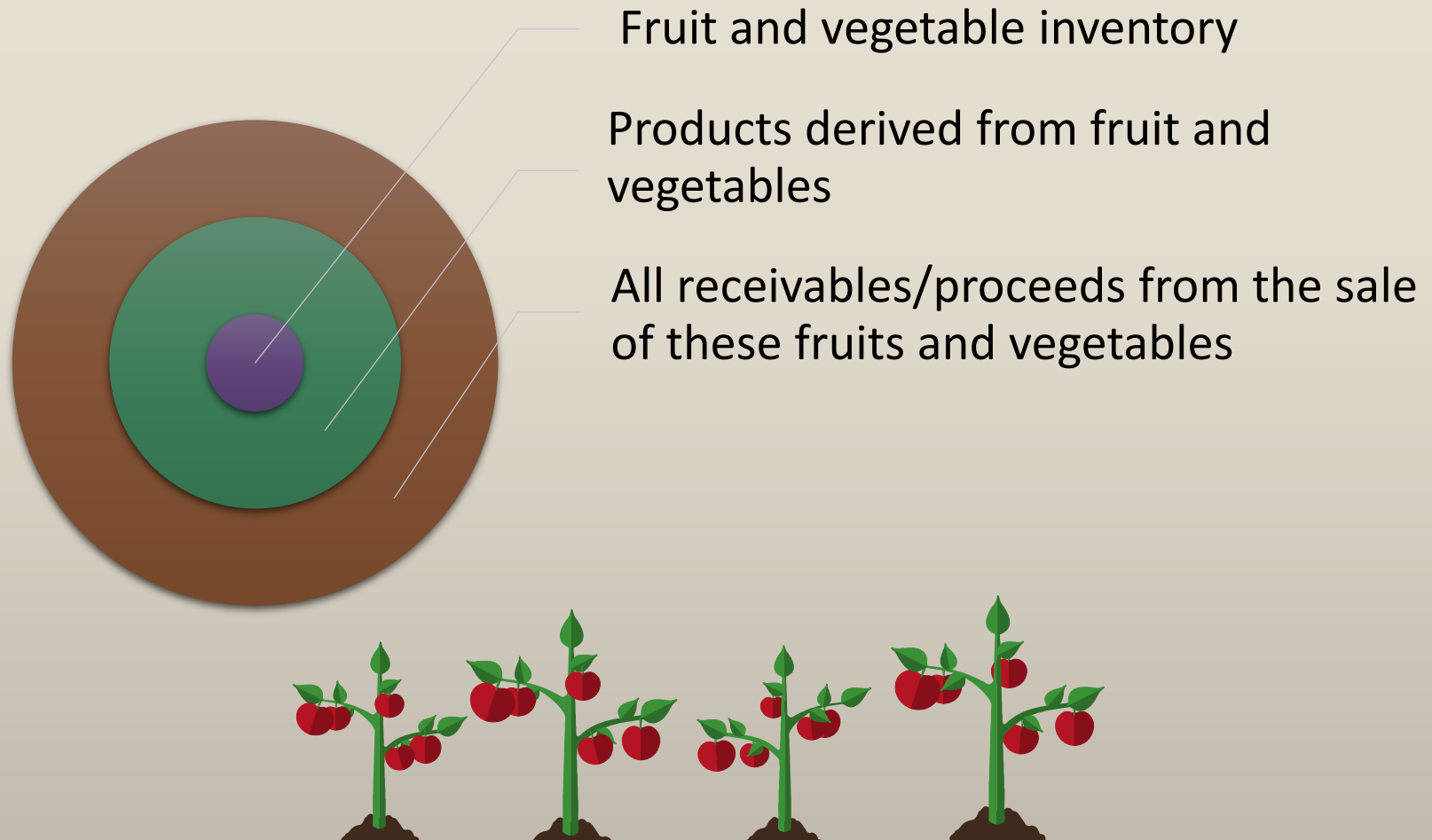
Trust applies to all F & V purchases

A buyer's insolvency or bankruptcy does not affect its liability

Non-licensees are protected too



What are PACA Trust assets?

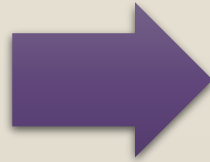


How is payment enforced under PACA Trust?



You must preserve
your trust rights first:

- Provide Trust Notice
- Payment terms must be 30 days or less!



Then pursue payment
through:

- File in U.S. District Court
- If debtor is bankrupt, file a claim with the Bankruptcy Court



Providing Trust Notice



Licensee via “magic language” on invoice or customary billing instrument

Non-licensee via separate written notice providing material terms of the transaction

See more details on our website at www.ams.usda.gov/paca



What is the “Magic Language”?



“The perishable agricultural commodities listed on this invoice are sold subject to statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.”



Customer Service Line - 800.495.7222

Option 2 - Inspection and contract questions

Call us directly: Basil Coale

Option 3 – Eastern Regional Office

PACAeast@ams.usda.gov

www.ams.usda.gov/paca

